

**PROFESSIONAL SERVICES AGREEMENT
FOR
IMPACT WAY EXTENSION**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the Pflugerville Community Development Corporation, a Texas Economic Development Corporation ("PCDC"), acting by and through its Executive Director, and DCS Engineering, LLC ("Consultant"), both of which may be referred to herein singularly as "Party" or collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"PCDC" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the Executive Director and/or their designee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on the date of this agreement signed by PCDC and terminate on July 1, 2019.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, PCDC retains the right to terminate this Agreement at the expiration of each of PCDC's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in Attachment No. 1 which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of PCDC. The determination made by PCDC shall be final, binding and conclusive on all Parties hereto. PCDC shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to PCDC. PCDC shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be

satisfactory to PCDC ; however, PCDC shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should PCDC elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by PCDC , of all services and activities set forth in this Agreement, PCDC agrees to pay Consultant an amount not to exceed one hundred and thirteen thousand seven hundred and fifty five dollars (\$113,755.00) as total compensation, to be paid to Consultant as further detailed in Attachment No. 1.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by PCDC. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by PCDC Director.

4.3 Final acceptance of work products and services require written approval by PCDC. The approval official shall be PCDC. Payment will be made to Consultant following written approval of the final work products and services by PCDC. PCDC shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of PCDC; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, PCDC has the right to use all such writings, documents and information as PCDC desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at PCDC's sole risk and without liability to the Consultant.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to PCDC at their respective offices, at all reasonable times and as often as PCDC may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by PCDC and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the

services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that PCDC shall have access to any and all such documents at any and all times, as deemed necessary by PCDC, during said retention period. PCDC may, at its election, require Consultant to return said documents to PCDC prior to or at the conclusion of said retention.

6.3 Consultant shall notify PCDC, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that PCDC will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar day's written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, PCDC may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. PCDC shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, PCDC shall have the right, without further notice, to terminate this Agreement in whole or in part as PCDC deems appropriate, and to contract with another consultant to complete the work required in this Agreement. PCDC shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of PCDC to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to PCDC or to such person(s) or firm(s) as PCDC may designate, at no additional cost to PCDC, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by PCDC, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by PCDC and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to PCDC its claims, in detail, for the monies owed by PCDC for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of PCDC and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall PCDC's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of PCDC's remedies, nor shall such termination limit, in any way, at law or at equity, PCDC's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for PCDC, to:

PCDC
Attn: Ms. Amy Madison
Executive Director
16225 Impact Way, Ste 2
Pflugerville, Texas 78660

If intended for Consultant, to: DCS Engineering, LLC
Attn: Darren C Strozewski, P.E.
1101 S. Capital of Texas Hwy, Bldg G-100
Austin, Texas 78746

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to PCDC, which shall be clearly labeled "*Impact Way Extension*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. PCDC will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to PCDC. PCDC shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by PCDC. No officer or employee, other than PCDC Attorney, shall have authority to waive this requirement.

9.2 PCDC reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by PCDC Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will PCDC allow modification whereupon PCDC may incur increased risk.

9.3 A Consultant's financial integrity is of interest to PCDC; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by PCDC, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Insurance Requirements

Consultant performing work on PCDC property or public right-of-way for PCDC shall provide PCDC a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide PCDC evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. PCDC, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to PCDC.

Listed below are the types and amounts of insurance required. PCDC reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations	1,000,000 per occurrence, 2,000,000 general aggregate Or	PCDC to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	PCDC to be provided a waiver of subrogation
Independent Contractors		PCDC prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
Business Auto Liability	1,000,000 combined single limit	PCDC to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	PCDC to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to PCDC. A contract will not be issued without evidence of Insurance. We will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 PCDC shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by PCDC, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to PCDC at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

PCDC
Attn: Executive Director
16225 Impact Way, Ste 2
Pflugerville, Texas 78660

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name PCDC, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to PCDC***, as respects operations and activities of, or on behalf of, the named insured performed under contract with PCDC, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to PCDC where PCDC is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of PCDC.
- Provide thirty (30) calendar days advance written notice directly to PCDC of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to PCDC. PCDC shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies PCDC may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, PCDC shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by PCDC for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, PCDC and the elected officials, employees, officers, directors, volunteers and representatives of PCDC, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon PCDC directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of

the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of PCDC, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise PCDC in writing within 24 hours of any claim or demand against PCDC or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND PCDC and the elected officials, employees, officers, directors, volunteers and representatives of PCDC, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by PCDC, PCDC'S agent, PCDC'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which PCDC exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming PCDC and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by PCDC.

10.4 CONSULTANT is required to perform services to PCDC under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majure - PCDC agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is PCDC's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Inland Geodetics (replatting of Lot 3F). Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the PCDC Director.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by PCDC, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. PCDC shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by PCDC Director.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of PCDC Director, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, PCDC may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to PCDC under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to PCDC, which PCDC sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of PCDC; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between PCDC and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between PCDC and Consultant. The Parties hereto understand and agree that PCDC shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind PCDC.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the City of Pflugerville prohibits a PCDC officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with PCDC. An officer or employee has a "prohibited financial interest" in a contract with PCDC or in the sale to PCDC of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a PCDC officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a PCDC contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of PCDC. Consultant further warrants and certifies that it has tendered to PCDC a Discretionary Contracts Disclosure Statement in compliance with the City of Pflugerville's Ethics Code.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both PCDC and Consultant, and subject to approval by PCDC Director.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to PCDC Charter, City Code, or ordinances of the City of Pflugerville, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of PCDC, such changes must be approved by PCDC Director, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in City of Pflugerville, Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

This Agreement is subject to approval by the City Council of the City of Pflugerville, Texas. PCDC is not be bound by the terms of this Agreement until the Agreement is approved by City Council.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be interpreted in the order of priority as appears below:

Attachment "A" Scope of Services including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS PCDC CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.


25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes PCDC or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

EXECUTED and AGREED to as of the dates indicated below.

PCDC


(Signature)

Printed Name: Amy Madison

Title: PCDC Executive Director

Date: 6-22-2017

**CONSULTANT
DCS ENGINEERING, LLC**



(Signature)

Printed Name: Darren C Strozewski, P.E.

Title: President

Date: 6/15/17

APPROVED AS TO FORM:


PCDC Attorney M. Shannon Kachery
Denton Navarro Rocha Bernal Hyde & Zech, PC

ATTACHMENT No. 1
PCDC
Impact Way Extension

In accordance with the Professional Services Agreement for the Impact Way Extension Project between PCDC and Consultant ("Agreement"), PCDC and Consultant agree as follows:

1. Specific Project Data

A. Title: Impact Way Extension

Description:

The Consultant will provide civil engineering, surveying and associated services for the proposed extension of Impact Way within the SH 130 Commerce Center so as to provide access to Lot 3F. The Impact Way extension will be designated as public right of way. Replatting of Lot 3F will be required.

This Project is not located within the contributing zone to the Edwards Aquifer Recharge Zone; therefore a water quality pond will not be needed to serve this site. In addition, a Water Pollution Abatement Plan (WPAP) will not need to be prepared and submitted to the Texas Commission on Environmental Quality (TCEQ) approval. The existing drainage channel and the existing regional stormwater detention pond as contained within the US Army Corp of Engineers' Conservation Easement affiliated with the SH 130 Commerce Center will be accommodated and used by this Project for stormwater conveyance and stormwater detention.

The Consultant will provide civil engineering services for the following: preparation and processing of a Preliminary Plan and Replat for Lot 3F, and final design, bidding and construction administration services for the public roadway and public utility improvements as described below. It should be noted here, PCDC may be required to hire additional construction contractor(s) outside the scope of this contract to construct the dry utilities.

The Impact Way extension will be located within PCDC property. The Impact Way right of way will extend southward approximately 1,000 ft from the existing right of way and end of roadway pavement. The Impact Way roadway will extend southward approximately 560 ft as a 26 ft wide (F-F) section and will terminate with a dead end. The roadway dead end will include concrete/pipe bollards and a Type III traffic barricade so as to prevent vehicular access beyond the dead end. The public right of way for Impact Way will be 80 ft wide for approximately 400 ft, where it will then transition to a 90 ft wide right of way for approximately 600 ft to the southern-most property line of the SH 130 Commerce Center. The proposed new public right of way will encompass approximately 2.0 acres.

A 70 ft long roadway hammerhead will be integrated into the Impact Way roadway extension via the construction of a proposed driveway apron serving Lot 3F. The proposed hammerhead will meet ESD No. 2 and PCDC Fire Code requirements for emergency vehicle turn-around clearances. A public access easement will be overlaid across the first 50 ft length of the future private driveway servicing Lot 3F, so as to accommodate the 70 ft long roadway hammerhead. The existing 20 ft wide asphalt access road with concrete low water crossing to Lot 3F and the existing 10 ft wide gravel access road to the existing lift station servicing the SH 130 Commerce Center will be demolished as part of the public right of way improvements. The existing lift station access road will be connected to the southern portion of the proposed Impact Way roadway extension. The existing storm sewer outfall structure (i.e. concrete wing walls and rip-rap energy dissipater pad) will be demolished and the existing 50 ft wide drainage ditch will be filled for the entire length of the Impact Way roadway extension until it intersects the northern side of the existing east/west drainage ditch.

Public storm sewer improvements along the Impact Way extension will include approximately 500 ft of new 7'x4'RCB storm sewer with new wing wall outlet structure, two new curb inlet structures with new 18" RCP storm pipe connections to the 7'x4' RCB storm sewer, and a 18" RCP stub-out to the west so as to accommodate off-site runoff from Lot 3C. Public water improvements will include approximately 250 ft of new 12" water main and three (3) new fire hydrants. Public sanitary sewer improvements will be limited to

ATTACHMENT No. 1
PCDC
Impact Way Extension

raising the rim elevations of the two existing sanitary sewer manholes that are located within the Impact Way roadway extension footprint. Existing electrical service will be extended southward approximately 1,600 ft inclusive of new transformers and new street lights. Existing gas service will be extended southward approximately 600 ft.

- B. The engineer's opinion of most probable construction cost including 15% contingency for the Impact Way roadway extension, sidewalks, waterlines, sanitary sewers, storm sewers, electric/gas extensions, and associated appurtenances equals \$769,000. It is assumed that suitable on-site materials are available within PCDC property for re-working and filling the existing 50 ft wide, 8 ft deep storm sewer ditch located within the footprint of the proposed Impact Way Extension.

2. Services of Engineer

- A. The Engineer shall provide the following scope of work related to the engineering design of:

- Demolition/decommissioning of existing roadway barricades, traffic signs, stormwater outfall structures, mortared rip-rap pad, 10 ft wide gravel access road (to existing lift station), 20 ft wide temporary asphalt access road (to Lot 3F) and concrete low water crossing, and associated appurtenances located within the footprint of the Impact Way roadway and right of way extension.
- Approximately 560 linear feet of 26 ft wide (F-F), two-lane asphalt roadway with curb and gutter.
- 10 ft wide asphalt driveway apron for tie-in to existing lift station access road.
- 26 ft wide asphalt driveway apron for future private access driveway to Lot 3F.
- 50 ft long, 26 ft wide asphalt driveway extension off the Lot 3F driveway apron to accommodate the required 70 ft long hammerhead (turn-around) for emergency vehicle use.
- Approximately 1,120 linear feet of ADA-compliant 6 ft wide concrete sidewalk (560 linear feet on both sides of roadway extension).
- Approximately 250 linear feet of 12-inch waterline.
- Approximately 100 linear feet of 18-inch storm sewer.
- Approximately 500 linear feet of 7 ft x 4 ft storm sewer.
- Concrete wing-wall structure and mortared rip-rap pad at new storm sewer outfall.
- Approximately 1,600 linear feet of 6" conduit for ONCOR electrical service extension.
- Approximately 600 linear feet of 6" conduit for gas service extension.
- Street lights along the length of the Impact Way roadway extension.

- B. Prepare the Replat of Lot 3F

PCDC intends to replat Lot 3F (currently platted as a 41.648 acre parcel). This Replat will include the Right-of-Way for the proposed Impact Way Extension Project. Future plats will be required if the tract boundaries are modified within the new limits of Lot 3F. A Preliminary Plan for the entire property must be submitted to and approved by the City of Pflugerville prior to submitting a Replat and/or a set of construction plans to the City of Pflugerville.

1. DCS will use the survey information and the land plan established in Phase II to develop a Preliminary Plan for Lot 3F. The submittal to the City will include a Utility Plan, Drainage Plan and other information required to complete the submittal packet.
2. DCS will prepare a Replat that will include the Impact Way roadway extension and the proposed Right-of-Way through the Impact Way Extension project. DCS will provide the Owner with the following Replat services.
3. Develop a Replat in accordance with the subdivision regulations for the City of Pflugerville.

ATTACHMENT No. 1
PCDC
Impact Way Extension

4. DCS will have lot pins placed at the property corners of the proposed property lines. The boundary of the lot will be defined by the boundary set with the approval of the Preliminary Plan.
5. Process the Replat through the review process of the City of Pflugerville and upon approval; provide the required copies for recordation with Travis County.
6. DCS will provide repinning of the property corners or easements platted as Part of Phase I or Phase II that are lost due to Impact Way Extension construction activities.

ITEM 1.0 - PROJECT MANAGEMENT

- 1.1 **Management Plan**
The Consultant shall prepare a Management Plan, which shall include the project Scope of Work, organization responsibilities, communications procedures, schedule, budget, quality control process, and billing.
- 1.2 **Subconsultant Management**
The Consultant shall provide management of Subconsultants including coordination of their project services. The list of sub-consultants is included under Section 6.
- 1.3 **Project Meetings**
The Consultant shall conduct project meetings to obtain input and decisions from PCDC staff. Consultant shall be responsible for developing meeting agendas and shall prepare the material as needed to achieve the meeting objectives. Consultant shall prepare meeting minutes and submit them electronically to the PCDC Engineer. Specific meetings planned for project management purposes are as follows:
 - 1.3.1 **Project Kickoff Meeting:** The Consultant shall conduct a project kickoff meeting at the PCDC offices to introduce the project team members, review project goals and objectives, discuss project elements and responsibilities, delineate communications procedures, and review the project schedule. Consultant shall identify any information needed from PCDC staff to complete the work.
 - 1.3.2 **90 Percent Design Review:** The Consultant shall conduct a 90 percent design review at the PCDC office after submittal and PCDC review of the 90 percent plans and specifications. The purpose of this meeting is to collect and discuss PCDC comments on the 90 percent design plans, identify any decisions needed from PCDC staff, etc.
- 1.4 **Quality Assurance/Quality Control**
The Consultant shall provide Quality Assurance/Quality Control by having a senior representative of the Consultant review the final plans and specifications with their comments addressed prior to submitting the final review plans and specifications to PCDC.
- 1.5 **Project Schedule**
The Consultant shall prepare a Project Schedule in order to identify the critical path(s) and challenges within the implementation of the Project.
- 1.6 **Engineer's Opinion of Most Probable Cost**
The Consultant will prepare an "Opinion of Most Probable Cost" which shall include the estimated construction cost for the Impact Way Extension Project 90% Plan Submittal, and Final Submittal of work. Additional costs will be included for easements and "soft" costs (engineering fees, surveying fees, legal fees, permitting fees, etc.) associated with the final design and easement acquisition.

ITEM 2.0 - PRELIMINARY DESIGN SERVICES

- 2.1 **Surveying**
 - 2.1.1 **Topographic Survey** – The Consultant will use existing topographic survey information and existing record drawings affiliated with Phase I and Phase II for the design of the Impact Way

ATTACHMENT No. 1
PCDC
Impact Way Extension

- Extension Project. The existing permanent benchmarks established for Phase II will be used for design/control of the Impact Way Extension Project.
- 2.1.2 This proposal includes the platting of one (1) easement for construction of the required permanent 70 ft long hammerhead (turn-around) for emergency vehicle use. Temporary and permanent easement limits will not be staked in the field as part of this work.
 - 2.1.3 Repinning - Property corners and/or easements platted as part of Phase I and Phase II that are lost due to Impact Way construction activities will be repinned.
- 2.2 Geotechnical Investigation
- 2.2.1 The Consultant will use existing geotechnical information affiliated with Phase I and Phase II for the design of the Impact Way Extension Project. This information is contained within a geotechnical report dated December 30, 2009 by Raba-Kistner Consultants, Inc., titled, "GEOTECHNICAL CONSULTING STUDY FOR PLUGERVILLE COMMERCIAL PARK, AUSTIN, TEXAS" and a geotechnical report dated May 31, 2013 by Fugro Consultants, Inc., titled, "GEOTECHNICAL INVESTIGATION AND PAVEMENT THICKNESS DESIGN - SH 130 COMMERCE CENTER, PHASE II, PFLUGERVILLE, TEXAS."
- 2.3 Easement Requirements
- 2.3.1 All new easements are handled by Replat, no separate instrument is needed.
- 2.4 Coordination with Regulatory Agencies, Private Utilities, and Potential Utility Customers
- 2.4.1 Regulatory Agencies
The Consultant shall identify the regulatory agencies for which permitting of construction activities will be required and shall meet with, and coordinate with these agencies to brief them on the particulars associated with this Project and gather permitting information which will be useful in ordinance compliance and final design. The Consultant will prepare and process permits required by outside agencies. PCDC shall be responsible for permit fees and signatures as necessary for processing. Travis County, TCEQ, and PCDC will be coordinated with for work within rights of way.
 - 2.4.2 Travis County
The Consultant shall coordinate crossings of Travis County rights-of-way with the Area Engineer in order to brief them on the Project and to determine if they have any concerns or objections regarding the proposed construction. The County's concerns will be incorporated into the preliminary and final design.
 - 2.4.3 Private Utility Companies (Gas, Electric, Telephone, and Cable)
The Consultant shall review the preliminary plans with each private utility to clearly set forth the project objectives and to determine if any utility has any concerns or objections. Effort will be expended to resolve any potential conflicts as well as to absolve the concerns and/or objections.
 - 2.4.4 Preliminary plans and profiles, preliminary details, preliminary technical specifications, and a preliminary Engineer's Opinion of Probable Cost will be provided to PCDC to conclude the efforts defined under Item 2. Upon review by PCDC, Consultant will include PCDC staff comments and move forward into the final design phase.

ITEM 3.0 - FINAL DESIGN SERVICES

- 3.1 Consultant shall evaluate testing methods and acceptance criteria and clearly set forth recommendations to be incorporated into the "Technical Specifications."
- 3.2 Prepare plans and specifications (contract documents) for construction of facilities enumerated in the Preliminary Design under Item 2.0 as authorized by PCDC. Half size drawings (i.e. 11" x 17" drawings) and project manual (i.e. specification book) will be produced for this project. Plans and specifications shall be per City of Pflugerville's Uniform Development Code (latest edition) and Engineering Design Guidelines & Construction Standards (latest edition) and all updates of these standards up to the time of the beginning of the bidding phase.

ATTACHMENT No. 1
PCDC
Impact Way Extension

- 3.3 Prepare traffic control plans in those areas deemed necessary. Traffic control layouts and details will be included in the plan set(s).
- 3.4 Submit required information and/or plans and specifications to obtain approval or permits from TCEQ, Travis County, and the City of Pflugerville for the proposed Impact Way Extension and associated utility extensions.
- 3.5 Deliverables:
 - 3.5.1 90 Percent Design Submittal: The 90 Percent design submittal will include plans, specifications, and 90% Engineer's Opinion of Probable Construction Cost.
 - 3.5.2 Final Submittal: The final submittal will include final plans, specifications, and Engineer's Opinion of Probable Construction Cost.

ITEM 4.0 - BIDDING SERVICES

- 4.1 Assist PCDC in receiving bids from General Contractors for this project. Work will include conducting a prebid meeting with the Contractors to review the scope of work as presented on the contract documents described above. Addenda to the bid documents shall be generated as required to address Contractor comments or questions. Additional costs for advertising are not included in this fee proposal and will be billed separately, if required.
- 4.2 The bid documents will be structured to have one bid for the Project.
- 4.3 Civcast will be utilized to maintain the plan holder and distribution lists. Civcast will provide bid packages to the Contractors at no cost. DCS will provide PDF copies of the plans and specification book to Civcast for their use.
- 4.4 Assist PCDC in the opening and tabulation of bids for construction of the Project, and consult with PCDC as to the proper action to be taken, based on the engineering considerations involved.
- 4.5 Assist in the preparation of formal Contract Documents, perform the bid tabulation, and letter of recommendation of award for Contractor.

ITEM 5.0 - CONSTRUCTION PHASE SERVICES

- 5.1 Coordinate and oversee the participation in a Pre-construction conference for the Project to be held at the beginning of construction at the PCDC office.
- 5.2 Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the contractor submits. This review is for the benefit of PCDC and covers only general conformance with the information given by the Contract Documents. The contractor is to review and stamp his approval on submittals prior to submitting to Engineer, and review by the Engineer does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with Contract Documents.
- 5.3 Administer monthly construction status meetings and conduct site visit on the same day. Review and recommend for approval Contractor pay request applications. Perform construction management duties for overall project that normally arise during daily construction activities.
- 5.4 Conduct, in company with PCDC, a final inspection of the Project for compliance with the Contract Documents, and submit recommendations concerning project status, as it may affect PCDC's final payment to the contractors.
- 5.5 Prepare record drawings and provide two copies to PCDC. Furnish one electronic copy on CD and one 11 x 17 copy of the record drawings to PCDC.
- 5.6 Resident Project Representative services are specifically excluded from this scope of work. Therefore, daily or weekly inspection of the work will not be conducted by the Consultant. In accordance with City of Pflugerville requirements, the City of Pflugerville's Resident Project Representatives will be performing these duties on this project.
- 5.7 The Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor or the safety precautions and programs incident to the work of

ATTACHMENT No. 1
PCDC
Impact Way Extension

the Contractor. Consultant shall not guarantee the performance of the Contractor nor be responsible for the acts, errors, omissions or the failure of the Contractor to perform the construction work in accordance with the Contract Documents.

- 5.8 Construction Staking – Temporary and permanent easement limits will not be staked in the field as part of this work. Construction layout, cut sheets, and staking for line and grade are specifically excluded from this scope of work and shall be provided and paid for by the construction contractor.

3. PCDC's Responsibilities

- A. PCDC shall be responsible for permit fees and signatures as necessary for processing.

4. Times for Rendering Services

- A. The Consultant shall have those responsibilities set forth in Article II of the Professional Services Agreement.
B. Authorization to Proceed: Signing of this Agreement for services shall be authorization by PCDC for Consultant to proceed with the work.
C. The timeline is based on receiving the notice to proceed by July 1, 2017. Construction will reach substantial completion by August 1, 2018 and a final completion date by September 1, 2018 which includes the average number of rain days per month experienced in Central Texas. Substantial completion will be defined in the bid documents to the Contractor as the Impact Way Extension roadway extension and associated utility extensions being constructed and operational in a manner that meets PCDC standards.
D. The services for the replatting and design (four months), PCDC/regulatory review and response to comments (two months), bidding/award (two months) and construction (six months) will be performed over a total of 14 months with completion dates as noted below.

• Notice to Proceed	Issued by July 1, 2017
• Preliminary Design	Complete by August 1, 2017
• Final Design – 90% Design Submittal	Complete by November 1, 2017
• 90% Design Review	Comments to Consultant by December 1, 2017
• Final Design – 100% Design Submittal	Complete by January 1, 2018
• Advertisement	January 1, 2018
• Bid Opening	February 1, 2018
• Award	March 1, 2018
• Contractor's Notice to Proceed	March 1, 2018
• Substantial Construction Completion	August 1, 2018
• Final Construction Completion/Close-out	September 1, 2018

5. Payments to Engineer

- A. PCDC shall pay Consultant for services rendered as follows: Consultant will invoice monthly for services rendered the preceding month based on the percentage of services completed. PCDC shall pay Consultant within 30 days for the services rendered and invoiced.
B. Lump Sum Fee: We propose to provide the services described above on a lump sum fee basis of \$113,755.00. Our proposed fees for the above scope of work are shown by task in the below table. The above referenced services will be performed within the duration discussed above.

ATTACHMENT No. 1
PCDC
Impact Way Extension

Fee Schedule

Task	Description	Lump Sum Fee
400	Preliminary Plan and Replat	\$8,000.00
500	Final Design	\$65,095.00
600	Bidding	\$6,200.00
700	Construction Administration	\$24,500.00
810	Replat (Inland)	\$9,960.00
	Total Lump Sum Fee =	\$113,755.00

- C. The terms of payment are set forth in Article IV of the Professional Services Agreement and Attachment No. 1.
- D. Filing, review, and permitting fees are not included in the above fees and will be paid directly by PCDC. For all items requested by PCDC, which are not identified under the above Scope of Services, a separate Additional Services request will be submitted for approval before commencing work. PCDC agrees that all submittals to PCDC by the Consultant for approval will be reviewed and approved on a timely basis.

6. SubConsultants:

A. Surveying – Inland Geodetics, LLC

7. Other Modifications to Agreement:

None